


7. Mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights. *McGukin v. Smith*, 974 F.2d 1050, 1059 (9<sup>th</sup> Cir. 1992) *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9<sup>th</sup> Circuit 1997).

H. Previous Motions. On October 7, 2005 Dr. Bauman filed a Motion for Summary Judgment seeking dismissal of Plaintiff's Complaint. On October 7, 2005 the State of Hawai'i, Department of Public Safety, OCCC Medical Unit, and Dr. Zienkiewicz filed a Motion for Summary Judgment to which Dr. Bauman filed a written Joinder.  Following a hearing on both of the motions, conducted December 12, 2005, Magistrate Kevin S. C. Chang filed a Findings and Recommendation to Grant Defendants' Motion for Summary Judgment.

I. Witnesses to be Called.

Dr. Bauman anticipates calling the following witnesses at trial:

1. Kay Bauman, M.D.  
c/o Roeca Louie & Hiraoka  
841 Bishop Street, Suite 900  
Honolulu, Hawai'i 96813

Defendant. This witness is expected to testify regarding liability and damages.